

FILED & ENTERED

OCT 21 2019

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY bakchell DEPUTY CLERK

**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:

PETER G. KUDRAVE,

Debtor.

Case No. 2:17-bk-17577-RK

Chapter 11

**ORDER DENYING CREDITOR'S MOTION  
TO CONVERT WITHOUT PREJUDICE**

**Vacated Hearing**

Date: October 23, 2019

Time: 11:00 a.m.

Place: Courtroom 1675

Roybal Federal Building

255 East Temple Street

Los Angeles, CA 90012

Pending before this court is the Motion of Creditor David A. Tilem to Convert Case from Chapter 11 to Chapter 7 ("Motion") (Docket No. 154), filed on September 20, 2019, which was noticed for hearing on October 23, 2019 at 11:00 a.m. The Proposed Estate of Deceased Debtor Peter Kudrave filed an opposition to the Motion, which was entitled "Estate of Debtor's Opposition to Motion to Convert Chapter 11 Case to Chapter 7" (Docket No. 155), on October 9, 2019. Creditor Tilem filed a reply to the opposition on October 15, 2019 (Docket No. 160).

Having considered the moving, opposing and reply papers, the court determines

1 that pursuant to Local Bankruptcy Rule 9013-1(j)(3), oral argument on the Motion is not  
2 necessary, the court dispenses with oral argument, the court vacates the hearing on the  
3 Motion on October 23, 2019 at 11:00 a.m., the court takes the Motion under submission  
4 and the court makes the following decision on the Motion.

5 Local Bankruptcy Rule 9013-1 applies to all motions brought before the court,  
6 including this one. Local Bankruptcy Rule 9013-1(c)(3) provides:

7 There must be served and filed with the motion and as part thereof:

- 8 (A) Duly authenticated copies of all photographs and documentary evidence  
9 that the moving party intends to submit in support of the motion, in  
10 addition to the declarations required or permitted by FRBP 9006(d); and  
11 (B) A written statement of all reasons in support thereof, together with a  
12 memorandum of points and authorities upon which the moving party will  
13 rely.

14 Local Bankruptcy Rule 9013-1(i) provides: "Factual contentions involved in any motion,  
15 opposition or other response to a motion, or reply, must be presented, heard, and  
16 determined upon declarations and other written evidence. The verification of a motion  
17 is not sufficient to constitute evidence on a motion, unless otherwise ordered by the  
18 court."

19 In support of the Motion, Creditor filed one exhibit, a copy of the amended plan of  
20 reorganization. This exhibit was not duly authenticated by a declaration under penalty  
21 of perjury, nor was there a request for the court to take judicial notice of the document  
22 pursuant to Federal Rule of Evidence 201.

23 Creditor did not otherwise file a declaration or other evidence in support of the  
24 factual assertions in the Motion. The factual assertions in the Motion that Debtor was  
25 and is in default of the confirmed reorganization plan are not supported by evidence,  
26 such as in a declaration of a competent witness to attest to such facts as required by  
27 Local Bankruptcy Rule 9013-1(i). While it appears that Creditor meant to file such a  
28 declaration because the caption of the Motion refers to one, there is no declaration in  
the Motion as reflected on the case docket. The court cannot grant a motion not

1 factually supported by evidence, which would be contrary to Local Bankruptcy Rule  
2 9013-1.

3 Local Bankruptcy Rule 9013-1 also requires that a written statement of the  
4 reasons in support of a motion together with a memorandum of points and authorities  
5 upon which the moving party will rely. Creditor does not cite any legal authority that  
6 supports his motion to convert the case from Chapter 11 to Chapter 7. The cited legal  
7 authorities in the Motion only relate to the death or incompetency of a party or a debtor.  
8 i.e., Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure  
9 1016, which do not deal with conversion.

10 Creditor argues that “[a]s provided in Rule 1016, the Court may convert or  
11 dismiss this case based on the ‘best interests of the parties.’” Motion at 9. Federal  
12 Rule of Bankruptcy Procedure 1016 does not so provide as it only states that the death  
13 or incompetency of a debtor does not abate a Chapter 11 reorganization bankruptcy  
14 case necessarily, and the case may be dismissed or may proceed in the same manner  
15 so far as possible as though the death or incompetency had not occurred. There is no  
16 explicit reference to case conversion in Rule 1016. Neither do the other cited legal  
17 authorities in the Motion, 11 U.S.C. §§ 105(a) or 1142(b), explicitly refer to case  
18 conversion.

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1 Accordingly, because Creditor has not made a prima facie showing of a factual  
2 and legal basis for relief in the Motion, the court denies the Motion without prejudice.  
3 The hearing on the Motion on October 23, 2019 at 11:00 a.m. is vacated, and no  
4 appearances are required on October 23, 2019.

5 IT IS SO ORDERED.

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25 Date: October 21, 2019



Robert Kwan  
United States Bankruptcy Judge